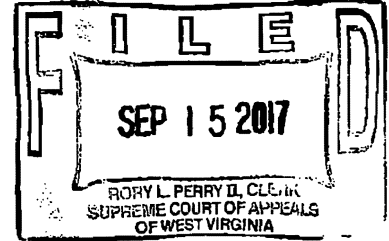


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BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS

\_\_\_\_\_  
IN CHARLESTON  
\_\_\_\_\_



**CARLOS SILVETI,**

**Petitioner,**

**v.**

**CARRIER REF. NO.: 2016000262  
JURISDICTION CLAIM NO.: 2016017643  
APPEAL NO.: 2051885  
SUPREME COURT NO.: 17-0746**

**OHIO VALLEY NURSING HOME, INC.,**

**Respondent.**

**RESPONSE ON BEHALF OF OHIO VALLEY NURSING HOME, INC.  
TO CLAIMANT'S PETITION FOR APPEAL**

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## **I. TABLE OF AUTHORITIES**

Where the claimant is ordered to appear for an examination by the Occupational Pneumoconiosis Board pursuant to subsection (b) of this section or is required to undergo a medical examination or examinations, pursuant to subsection (a) of this section, the party that referred the claimant to the Occupational Pneumoconiosis Board or required the medical examination shall reimburse the claimant for loss of wages and reasonable traveling expenses as set forth in subsection (e) and other expenses in connection with the examination or examinations. W.Va. Code §23-4-8(c) (2009). [Cited on page 8]

The claimant shall be reimbursed for reasonable traveling expenses as set forth in subsection (e) of this section incurred in connection with medical examinations, appointments and treatments, including appointments with the claimant's authorized treating physician. W.Va. Code §23-4-8(d) (2009). [Cited on page 8]

The claimant's traveling expenses include, at a minimum, reimbursement for meals, lodging and mileage. Reimbursement for travel in a personal motor vehicle shall be at the mileage reimbursement rates contained in the Department of Administration's Purchasing Division Travel Rules as authorized by section eleven [§12-3-11], article three, chapter twelve of this code in effect at the time the treatment is authorized. W.Va. Code §23-4-8(e) (2009). [Cited on page 8]

Claimants are entitled to reasonable travel, meals and lodging expenses actually incurred in connection with an authorized medical examination or treatment. In determining the reasonableness of such expenses, the reasonable party shall utilize the travel regulations for State employees as a guide, unless specific provisions to the contrary are otherwise contained herein. W.Va. C.S.R. §85-1-15.1 (2009). [Cited on page 8]

If a claimant is required to travel in a personal vehicle for medical examinations or treatment, the mileage reimbursement rate provided for in the West Virginia Department of Administration's Purchasing Division Travel Rules as authorized by W.Va. Code §12-3-11 shall apply. W.Va. C.S.R. §85-1-15.2 (2009). [Cited on page 8]

Meal expenses are reimbursable for travel requiring overnight lodging. Section 4.3 of the State of West Virginia Travel Rules, (2015). [Cited on page 8]

Interpretations as to the meaning and application of workers' compensation statutes rendered by the Workers' Compensation Commissioner, as the governmental official charged with the administration and enforcement of the workers' compensation statutory law of this State, pursuant to W.Va. Code Seciton 23-1-1 (1997), should be accorded deference. Syl. Pt. 7, *Wampler Foods, Inc. v. Workers' Comp. Div.*, 602 S.E.2d 805, (2004); Syl. Pt. 4, *State ex rel. ACF Industries, Inc. v. Vieweg*, 514 S.E.2d 176 (1999). [Cited on page 9]

The Division's interpretation also has great **bureaucratic** appeal, as it is a "bright-line," easy-to-apply interpretation. *Wampler Foods, Inc. v. Workers' Comp. Div.*, 602 S.E.2d 805, 820 (2004). [Cited on page 9]

Lastly, we also note that none of the parties have challenged the Division's interpretation of the word "award," or offered an alternate interpretation. *Wampler Foods, Inc. v. Workers' Comp. Div.*, 602 S.E.2d 805, 820 (2004). [Cited on page 10]

Statutes which relate to the same subject matter should be read and applied together so that the Legislature's intention can be gathered from the whole of the enactments. Syl. Pt. 3, *Smith v. State Workmen's Compensation Comm'r*, 219 S.E.2d 361 (1975). [Cited on page 10]

It is the specific intent of the Legislature that workers' compensation cases shall be decided on their merits and that a rule of 'liberal construction' based on any 'remedial' basis of workers' compensation legislation shall not affect the weighing of evidence in resolving such cases. Accordingly, the Legislature hereby declares that any remedial component of the workers' compensation laws is not to cause the workers' compensation laws to receive liberal construction that alters in any way the proper weighing of evidence as required by [applicable law]. W.Va. Code § 23-1-1 (b) (2007). [Cited on pages 12]

For all awards made on or after the effective date of the amendment and reenactment of this section during the year two thousand three, resolution of any issue raised in administering this chapter shall be based on a weighing of all evidence pertaining to the issue and a finding that a preponderance of the evidence supports the chosen manner of resolution. The process of weighing evidence shall include, but not be limited to, an assessment of the relevance, credibility, materiality and reliability that the evidence possesses in the context of the issue presented. Under no circumstances will an issue be resolved by allowing certain evidence to be dispositive simply because it is reliable and is most favorable to a party's interests or position. W.Va. Code § 23-4-1g (a) (2003). [Cited on page 12]

Except as provided in subsection (a) of this section, a claim for compensation filed pursuant to this chapter must be decided on its merit and not according to any principle that requires statutes governing workers' compensation to be liberally construed because they are remedial in nature. No such principle may be used in the application of law to the facts of a case arising out of this chapter. W.Va. Code § 23-4-1g (b) (2003). [Cited on page 12]

The Supreme Court of Appeals "will not reverse a finding of fact made by the Workmen's Compensation Appeal Board unless it appears from the proof upon which the appeal board acted that the finding is plainly wrong." Syl. pt. 2, *Jordan v. State Workmen's Comp. Comm'r*, 156 W.Va. 159, 191 S.E.2d 497 (W.Va. 1972) (citations omitted). [Cited on page 12]

"The plainly wrong standard of review is a deferential one, which presumes an administrative tribunal's actions are valid as long as the decision is supported by substantial evidence." Syl. pt. 3, *In re: Queen*, 196 W.Va. 442, 473 S.E.2d 483 (W.Va. 1996); *Frymier-Holloran v. Paige*, 193 W.Va. 687, 695, 458 S.E.2d 780, 788 (W.Va. 1995). [Cited on page 12]

A decision of the Workers' Compensation Board of Review is clearly wrong only if it is not supported by evidence of record, is clearly against a preponderance of the evidence, or based upon evidence which is speculative and inadequate. *Gibson v. State Comp. Comm'r*, 127 W.Va. 97, 31 S.E.2d 555 (1944); *Estep v. State Comp. Comm'r*, 130 W.Va. 504, 44 S.E.2d 305 (1947); *Barnett v.*

*State Workers' Comp. Comm'r*, 153 W.Va. 796, 172 S.E.2d 698 (1970); *Smith v. State Workers' Comp. Comm'r*, 155 W.Va. 883, 189 S.E.2d 838 (1972). [Cited on pages 12-13]

An Order of the Workers' Compensation Appeal Board affirming the findings of the Commissioner will not be set aside if substantial evidence and circumstances support it. *Bias v. Workers' Compensation Comm'r*, 345 S.E.2d 23 (W.Va. 1986); *Pennington v. State Workmen's Compensation Comm'r*, 222 S.E.2d 579 (W.Va. 1976). [Cited on page 13]

"Where the finding of the [Board of Review] is contrary to undisputed evidence, or at variance with a clear preponderance of the whole evidence, [its] finding will be reversed." *McGeary v. State Compensation Director*, 135 S.E.2d 345, 347 (W.Va. 1964) (citations omitted). [Cited on page 13]

If the decision of the [Board of Review] represents an affirmation of a prior ruling by both the commission and the office of judges that was entered on the same issue in the same claim, the decision of the board may be reversed or modified by the Supreme Court of Appeals only if the decision is in clear violation of constitutional or statutory provision, is clearly the result of erroneous conclusions of law, or is based upon the board's material misstatement or mischaracterization of particular components of the evidentiary record. The court may not conduct a de novo re-weighing of the evidentiary record. If the court reverses or modifies a decision of the board pursuant to this subsection, it shall state with specificity the basis for the reversal or modification and the manner in which the decision of the board clearly violated constitutional or statutory provisions, resulted from erroneous conclusions of law, or was based upon the board's material misstatement or mischaracterization of particular components of the evidentiary record. W.Va. Code § 23-5-15 (c) (2005). [Cited on page 13]

## **II. ASSIGNMENT OF ERROR**

The Workers' Compensation Board of Review did not commit reversible error. The applicable rules and regulations clearly establish that claimant is not entitled to meal expenses when overnight travel is not required.

## **III. STATEMENT OF THE CASE**

Claimant allegedly injured his left shoulder and left knee on January 7, 2016 while in the course of his employment by Ohio Valley Nursing Home as an Executive Chef. *See* Appendix to claimant's petition for appeal, Ex. A. Although he initially kept working, at some point thereafter he required surgery, and then received temporary total disability ("TTD") benefits. In fact, on August 5, 2016, the claim administrator issued a *Notice of Benefits* advising that

claimant was eligible for TTD benefits from July 19, 2016 through September 16, 2016. *See* Appendix, Ex. 1.

Claimant was then scheduled for an independent medical evaluation (“IME”) by Dr. P. Kent Thrush on August 8, 2016. *See* Appendix to claimant’s petition for appeal, Ex. C. Dr. Thrush is located in Fairmont, West Virginia, which required approximately one hundred (100) miles of travel from claimant’s home in Vienna, West Virginia. It should be noted that claimant never objected to the IME by Dr. Thrush.

Subsequently, claimant requested reimbursement resulting from the IME, and included a request for mileage reimbursement for two hundred and two (202) miles of round-trip travel to attend the IME, along with meal expenses of \$80.00 for two meals, and included his receipt from the Outback Steakhouse in Bridgeport, West Virginia. *See* Appendix to claimant’s petition for appeal, Ex. D. Claimant had dinner at Outback after the IME. However, the receipt is not itemized, as it only shows the total of \$64.67, plus a tip in the amount of \$15.33, bringing the total to \$80.00. Claimant also requested reimbursement of lost wages at Ohio Valley Health Care, where he was paid \$27.54 per hour.<sup>1</sup>

On August 19, 2016, the claims administrator issued an *Initial Notice of Benefits Suspension* advising that claimant’s TTD benefits were suspended because Dr. Thrush found that claimant had reached his maximum medical improvement. *See* Appendix, Ex. 2. Claimant’s TTD benefits were paid through August 19, 2016, when the suspension notice was issued.

There is no dispute that claimant received full mileage reimbursement for the 202 miles of travel. Between September 9, 2016 and September 12, 2016, claimant’s counsel and the claim administrator engaged in an email exchange where claimant’s counsel requested payment of 5.5

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<sup>1</sup> In his appeal to the Workers’ Compensation Board of Review, claimant argued that wages should have been reimbursed for the IME, but does not make the same argument in this appeal. Just so the Court is aware, the employer wishes to point out that claimant was still receiving TTD benefits on the date of the IME.

hours of lost wages for claimant's travel time and attendance at the IME. *See* Appendix to claimant's petition for appeal, Ex. E. He also requested reimbursement for claimant's meal expense of approximately \$29.97, for his portion of the \$80.00 restaurant bill.

By order dated September 29, 2016, the claims administrator denied the request for meal reimbursement, as claimant did not qualify for those benefits pursuant to West Virginia State Travel Guidelines, and also denied the request for 5.5 hours of lost wages because claimant was receiving TTD benefits at the time of the evaluation. *See* Appendix to claimant's petition for appeal, Ex. H. Claimant protested.

The Office of Judges issued a decision on February 24, 2017, affirming the September 29, 2016 order. *See* Appendix to claimant's petition for appeal, Ex. F. The ALJ noted that claimant relies solely on West Virginia Code Section 23-4-8(d), but that provision also notes that reimbursement for travel shall be at the reimbursement rates contained in the Department of Administration's Purchasing Division Travel Rates. The ALJ further noted that West Virginia Code of State Rules Section 85-1-15 also references the West Virginia Department of Administration's Purchasing Division Travel Rules, and that Section 4.3 of those rules provides that meal expenses are reasonable only for travel requiring overnight lodging. The ALJ also concluded that because claimant was receiving wage replacement benefits, *i.e.* TTD benefits, he was not entitled to additional lost wages for attendance at the IME. Claimant appealed.

The Board of Review issued a decision dated July 26, 2017, adopting the ALJ's findings of fact and conclusions of law in their entirety. *See* Appendix to claimant's petition for appeal, orders, Ex. G. Accordingly, the Board of Review affirmed the ALJ's decision. Claimant now appeals.

Claimant fails to demonstrate any error whatsoever in the decision of the Board of Review. The decision was based upon and supported by the applicable statute and regulations and should be affirmed.

#### **IV. SUMMARY OF ARGUMENT**

The Board of Review's decision was correct because the applicable statute and regulations support a finding that meal expenses are inappropriate when overnight travel is not required. Claimant is only entitled to "reasonable" traveling expenses under W.Va. Code Section 23-4-8 (d), and the Insurance Commissioner and Industrial Council promulgated a Rule, W.Va. C.S.R. Section 85-1-15.1, which provides a fair, logical, and non-discriminatory manner to determine what is "reasonable" in terms of meal reimbursement, such Rule adopting the State Travel Rules as a guide. Accordingly, the denial of meal expenses was wholly correct and should be affirmed.

#### **V. STATEMENT REGARDING ORAL ARGUMENT AND DECISION**

Oral argument is unnecessary, pursuant to the criteria provided in Rule 18(a) of this Honorable Court's Rules of Appellate Procedure. The facts and legal arguments are adequately presented in the briefs and record on appeal.

#### **VI. ARGUMENT**

Although he disagrees with the decisions, claimant fails to establish that the ALJ or Board of Review committed reversible error. The ALJ found that claimant was not entitled to lost wages arising out of his attendance at an IME because he was currently receiving TTD benefits, which are wage replacement benefits.<sup>2</sup> The ALJ also concluded that in reading the applicable statutory provisions regarding travel *in pari materia*, claimant is not entitled to reimbursement of meal expenses because the IME did not require overnight travel. The ALJ's

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<sup>2</sup> Again, claimant apparently does not appeal insofar as wage replacement benefits were not awarded.

decision was correct, the Board of Review agreed, and those decisions should be affirmed.

There are several statutory provisions pertaining to reimbursement of expenses for medical examinations in Workers' Compensation claims. First, pursuant to West Virginia Code Section 23-4-8 (c), claimant is entitled to loss of wages **and "reasonable" traveling expenses**. Again, claimant was compensated for his lost wages by way of TTD benefits. The statute further provides that travel expenses must be reasonable, and reimbursement for travel in a personal motor vehicle is governed by the Department of Administration's Purchasing Division Travel Rules. *See* W.Va. Code §23-4-8 (d)-(e) (2009).

West Virginia Code of State Rules Section 85-1 ("Rule 1") also sets forth rules for the reimbursement of travel in relation to medical examinations or treatment in Workers' Compensation claims. In fact, the rules provide that if a claimant is required to travel in a personal vehicle, the mileage reimbursement rate is that which is in effect in the West Virginia Department of Administration's Purchasing Division Travel Rules, as authorized by W.Va. Code Section 12-3-11. *See* W.Va. C.S.R. § 85-1-15.1 (2009).

The State of West Virginia Travel Rules clearly provide that meal expenses are reimbursable for travel requiring overnight lodging. *See* Section 4.3 of the State of West Virginia Travel Rules, (2015).

Claimant argues that W.Va. Code Section 23-4-8 requires that claimant be reimbursed for meal expenses under any circumstance and without regard to the above-referenced Travel Rules. He emphasizes that claimants are forced to incur unreimbursed meal expenses.

Hypothetically, if claimant's argument is adopted and he is held to be entitled to meal reimbursement in this appeal, it could mean that claimants are entitled to meal reimbursement, with no maximum, even if a medical appointment occurs just down the street from their home. It

is obvious that this was not the legislature's intent in allowing claimants to be reimbursed for "reasonable" travel expenses.

In *Wampler Foods, Inc. v. Workers' Comp. Div.*, this Honorable Court held that the interpretation of the Workers' Compensation Commissioner as to the meaning and application of Workers' Compensation statutes must be afforded deference. Syl. Pt. 7, *Wampler Foods, Inc. v. Workers' Comp. Div.*, 602 S.E.2d 805, (2004). Since the *Wampler Foods* decision, the Workers' Compensation Commissioner's office was statutorily eliminated, and rulemaking authority lies with the Insurance Commissioner and the Industrial Council. The Insurance Commissioner promulgated and the Industrial Council approved the current version of W.Va. C.S.R. Section 85-1-15.1, which states that state travel regulations shall serve as a guide as to what is "reasonable" except where there are specific provisions to the contrary. This interpretation of W.Va. Code Section 23-4-8 (d) is fair, logical, and non-discriminatory, and is entitled under *Wampler Foods* to wide latitude by the courts. Again, without such interpretation and limitation, claimants could be entitled to a meal for every appointment, no matter how minor and without regard to time or distance traveled, and it was within the discretion of the Insurance Commissioner and the Industrial Council to promulgate a rule to guide the determination of reasonable traveling expenses.

Under *Wampler Foods*, the agency's interpretation regarding "reasonable traveling expenses" is consistent with the plain meaning and ordinary construction of W.Va. Code Section 23-4-8 (d), and should not be invalidated by the Court. The Court in *Wampler Foods* lauded the agency's interpretation of a term, *i.e.* "award," at issue in that case, finding that the Commissioner's interpretation "has great bureaucratic appeal, as it is a 'bright-line' easy-to-apply interpretation," and the same can certainly be said for the agency's interpretation of

“reasonable traveling expenses.” *Wampler Foods, Inc. v. Workers' Comp. Div.*, 602 S.E.2d 805, 820 (2004). If a state employee would be reimbursed, so would a Workers’ Compensation claimant, and if a state employee would not be reimbursed, then neither is the Workers’ Compensation claimant. Further, in *Wampler Foods*, the Court noted that none of the parties opposing the Commission’s interpretation advanced any other interpretation or definition of the term “award,” and in the instant case, the same is true. *Id.* Claimant offers no alternative way to interpret or define the term “reasonable” in W.Va. Code Section 23-4-8 (d). He simply argues that all meals (and by extension, lodging) should be reimbursable, and this renders the term “reasonable” in W.Va. Code Section 23-4-8 (d) a nullity.

Not only is the interpretation urged by claimant obviously unreasonable, it is even contrary to past versions of Rule 1. For example, the immediately preceding version of Rule 1, adopted by the Workers’ Compensation Board of Managers, stated that a claimant had to travel over 400 miles in order to receive meal reimbursement. Thus, claimant not only urges an illogical interpretation of the phrase “reasonable traveling expenses,” he also seeks to abandon years of precedent limiting claimants to meal reimbursement only in such cases as considerable time and/or distance was required.

Furthermore, this Honorable Court’s decisions clearly indicate that statutory provisions which relate to the same subject matter should be read and applied together. Syl. Pt. 3, *Smith v. State Workmen’s Compensation Comm’r*, 219 S.E.2d 361 (1975). In other words, as found by the ALJ, the applicable statutes and rules should be read *in pari materia*.

The ALJ and Board of Review read W.Va. Code Sections 23-4-8 (d) and 23-4-8 (e) and Rule 85-1-15.1 *in pari materia* so that they do not result in absurd outcomes. Claimant urges the Court to interpret meals to be reimbursable in all cases, regardless of time or distance traveled.

Taking this argument to its logical conclusion, this means that even lodging would be reimbursable in all cases. To illustrate the point, consider the hypothetical physical therapy appointment with a provider whose facility happens to be located on the same city block as claimant's residence. Under claimant's interpretation, for each such appointment, claimant could not only receive meal reimbursement, he could even stay at a hotel and be reimbursed for mileage, meals, *and* lodging. In fact, without the limitations stated in the State Travel Rules, not only would all such expenses be reimbursable, there would not even be any caps on reimbursable expenses. Even where no significant distance is required, claimant could stay in the nicest hotel in town and order the most expensive meals, arguably even alcoholic beverages, because there would be no restriction on the "reasonableness" of such expenses. By referring to the State Travel Rules as a guide to determine reasonableness, the Insurance Commissioner and Industrial Council adopted a simple, logical manner to avoid the non-sensical outcome urged by claimant's argument. In the enactment of W.Va. Code Sections 23-4-8 (d) and (e), it is impossible that the Legislature intended for all claimants to receive unlimited meal and lodging reimbursement, without limitation. To ensure that travel reimbursement occurs only where it is reasonable, the agency promulgated a rule, and the Court must afford deference to the agency's interpretation. Claimant advances no good cause to determine that the Insurance Commissioner or Industrial Council abused their discretion or acted improperly.

The ALJ properly considered the applicable statutes and regulations, along with the evidence, and concluded that claimant was not entitled to meal reimbursement. The Board of Review adopted the ALJ's holding. The statute and regulations completely support the conclusions reached by the Board of Review, and the claimant fails to demonstrate any error by the Board of Review under the applicable standards of review.

It is the specific intent of the Legislature that workers' compensation cases shall be decided on their merits and that a rule of 'liberal construction' based on any 'remedial' basis of workers' compensation legislation shall not affect the weighing of evidence in resolving such cases. Accordingly, the Legislature hereby declares that any remedial component of the workers' compensation laws is not to cause the workers' compensation laws to receive liberal construction that alters in any way the proper weighing of evidence as required by [applicable law]. W.Va. Code § 23-1-1 (b) (2007).

For all awards made on or after the effective date of the amendment and reenactment of this section during the year two thousand three, resolution of any issue raised in administering this chapter shall be based on a weighing of all evidence pertaining to the issue and a finding that a preponderance of the evidence supports the chosen manner of resolution. The process of weighing evidence shall include, but not be limited to, an assessment of the relevance, credibility, materiality and reliability that the evidence possesses in the context of the issue presented. Under no circumstances will an issue be resolved by allowing certain evidence to be dispositive simply because it is reliable and is most favorable to a party's interests or position. W.Va. Code § 23-4-1g (a) (2003).

Except as provided in subsection (a) of this section, a claim for compensation filed pursuant to this chapter must be decided on its merit and not according to any principle that requires statutes governing workers' compensation to be liberally construed because they are remedial in nature. No such principle may be used in the application of law to the facts of a case arising out of this chapter. W.Va. Code § 23-4-1g (b) (2003).

The Supreme Court of Appeals "will not reverse a finding of fact made by the Workmen's Compensation Appeal Board unless it appears from the proof upon which the appeal board acted that the finding is plainly wrong." Syl. pt. 2, *Jordan v. State Workmen's Comp. Comm'r*, 156 W.Va. 159, 191 S.E.2d 497 (1972) (citations omitted). "The plainly wrong standard of review is a deferential one, which presumes an administrative tribunal's actions are valid as long as the decision is supported by substantial evidence." Syl. pt. 3, *In re: Queen*, 196 W.Va. 442, 473 S.E.2d 483 (1996); *Frymier-Holloran v. Paige*, 193 W.Va. 687, 695, 458 S.E.2d 780, 788 (1995). A decision of the Workers' Compensation Board of Review is clearly wrong only if it is not supported by evidence of record, is clearly against a preponderance of the evidence, or based upon evidence which is speculative and inadequate. *Gibson v. State Comp. Comm'r*, 127 W.Va. 97, 31 S.E.2d 555

(1944); *Estep v. State Comp. Comm'r*, 130 W.Va. 504, 44 S.E.2d 305 (1947); *Barnett v. State Workers' Comp. Comm'r*, 153 W.Va. 796, 172 S.E.2d 698 (1970); *Smith v. State Workers' Comp. Comm'r*, 155 W.Va. 883, 189 S.E.2d 838 (1972). An Order of the Workers' Compensation Appeal Board affirming the findings of the Commissioner will not be set aside if substantial evidence and circumstances support it. *Bias v. Workers' Compensation Comm'r*, 345 S.E.2d 23 (1986); *Pennington v. State Workmen's Compensation Comm'r*, 222 S.E.2d 579 (1976). "Where the finding of the [Board of Review] is contrary to undisputed evidence, or at variance with a clear preponderance of the whole evidence, [its] finding will be reversed." *McGeary v. State Compensation Director*, 135 S.E.2d 345, 347 (W.Va. 1964) (citations omitted).

If the decision of the [Board of Review] represents an affirmation of a prior ruling by both the commission and the office of judges that was entered on the same issue in the same claim, the decision of the board may be reversed or modified by the Supreme Court of Appeals only if the decision is in clear violation of constitutional or statutory provision, is clearly the result of erroneous conclusions of law, or is based upon the board's material misstatement or mischaracterization of particular components of the evidentiary record. The court may not conduct a de novo re-weighing of the evidentiary record. If the court reverses or modifies a decision of the board pursuant to this subsection, it shall state with specificity the basis for the reversal or modification and the manner in which the decision of the board clearly violated constitutional or statutory provisions, resulted from erroneous conclusions of law, or was based upon the board's material misstatement or mischaracterization of particular components of the evidentiary record. W.Va. Code § 23-5-15 (c) (2005).

As to the issue presented to this Honorable Court, the Office of Judges and Board of Review affirmed the decision of the claim administrator, and the Board of Review's decision should not be reversed under the above standards. The Board's decision was based upon and supported by a proper application of the applicable rules and regulations. To allow meal reimbursement in this case would not only be contrary to West Virginia Code Section 23-4-8, Rule 1-15.2, and Rule 4.3 of the Department of Administration's Travel Reimbursement Rules, it would also be unreasonable and contrary to decades of Workers' Compensation practice.

Workers' Compensation regulations have virtually always required considerable time or distance before meals are considered reimbursable, and claimant seeks to abandon this requirement, without justification. The Office of Judges' and Board of Review's decisions result in a logical, fair, and non-discriminatory application of W.Va. Code Section 23-4-8 and ensure that travel reimbursement is reasonable. For these reasons, the Board of Review's decision should be affirmed.

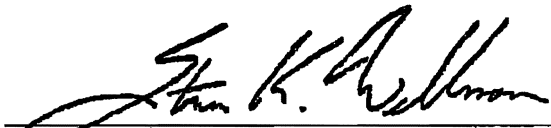
## **VII. CONCLUSION**

WHEREFORE, the Respondent, Ohio Valley Nursing Home, Inc., respectfully prays that this Honorable Court affirm the Workers' Compensation Board of Review's decision of July 26, 2017.

Respectfully submitted,

OHIO VALLEY NURSING HOME, INC.

By counsel

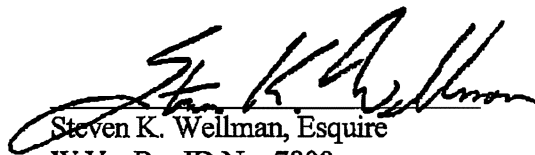


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**CERTIFICATE OF SERVICE**

I, Steven K. Wellman, hereby certify that on the 14<sup>th</sup> day of September 2017, a copy of the foregoing "RESPONSE ON BEHALF OF OHIO VALLEY NURSING HOME, INC." was mailed, postage prepaid by First Class Mail to the following:

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Parkersburg, West Virginia 26102

  
Steven K. Wellman, Esquire  
W.Va. Bar ID No. 7808